

Physicians for Women's Health
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H.B. No. 6687 (RAISED) AN ACT CONCERNING CERTIFICATES OF MERIT

Testimony of Mark S. DeFrancesco, MD
Vice President, Physicians for Women's Health, LLC
Chief Medical Officer, Women's Health Connecticut

April 1, 2013

Dear Members of the Committee:

I have practiced ObGyn in the Waterbury area for 29 years, and for the past 15 years have also been the Chief Medical Officer of Women's Health Connecticut. Our statewide practice includes about 200 ObGyns and approximately 35 advance practice care providers, and we provide care for more than 350,000 women in Connecticut.

In the distant past, before attending medical school, I served in the State House as a Representative from the 99th district (1973-74), so I also am very cognizant of the heavy responsibility you have in making decisions every day that will affect the lives of all of our citizens.

I am writing to ask that you oppose passage of HB 6687, which would severely weaken the "Certificate of Merit" statute. As you may know, this statute was strengthened as part of tort reform package approved in 2005, and once again, that "package" is being attacked in a piecemeal fashion. For the past two years, this same Bill was defeated once in the House and once in the Senate. Now, it is coming back as HB 6687. It is still a very bad proposal for reasons I will outline below.

The Connecticut Trial Lawyer's Association has been lobbying hard for at least the past three years to undo this part of the Certificate of Merit statute. Doing so will make it easier to file frivolous lawsuits that ultimately drive up the cost of health care. HB 6687 seeks to eliminate the current requirement that a plaintiff obtain a written opinion as to the merit of a suit from a "similar health care provider" prior to filing suit. The "similar health care provider" provision in the statute is an "apples to apples" requirement.

For example, if a plaintiff accuses an obstetrician of malpractice, the plaintiff must first get an opinion from another obstetrician that malpractice has occurred. An opinion from a general surgeon or an internist will not suffice. Likewise, if a nurse is accused of malpractice, the plaintiff must get an opinion from a nurse. Again, we are talking "apples to apples."

HB 6687 would eliminate the "similar health care provider" requirement and would require one from a "qualified health care provider." On the surface, that sounds very reasonable. However there is a problem with that scenario.

The Bill still allows a plaintiff to not disclose the identity of the expert who provided the certificate of merit, so it would be impossible for a defendant to challenge the expert to see if he is indeed "qualified." This will add a new layer of complexity to an already complex case, spawn more motions, discovery and legal expense, and further clog the legal system.

The other problem with the Bill is that, even if a plaintiff's attorney deliberately chooses not to comply with the written opinion requirement, a defendant would not be entitled to dismissal of the suit. A judge must issue an order giving the plaintiff an additional 60 days to get an opinion letter that should have already been obtained. This would be in addition to the 90-day extension of the statute of limitations that the plaintiff already gets.

The obvious problem here is that the plaintiff gets multiple "bites at the apple" as they say, with at least a 90 day extension of the statute of limitations to allow extra time to obtain a certifying letter, and if he chooses not to do so, or files one that is insufficient, he gets an additional 60 days, and this cycle can go on and on, until he may get an opinion letter that is sufficient.

As an ObGyn who knows what it is like to sometimes have to make split-second critical decisions in clinical practice, it is extremely worrisome to me that someone who may NOT be a similar provider and who never faced the same or even similar situations, would be opining as to the appropriateness of my actions. How can someone not bound by the same "standards of care" be expected to give an unbiased and accurate opinion as to whether a defendant physician violated those standards?

For these reasons, I would ask you to please vote against HB 6687.

Thank you for your consideration.